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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO HUMAN SERVICES -- QUALITY SELF-DIRECTED SERVICES

Introduced By: Senators Cano, DiPalma, Euer, Lawson, DiMario, Murray, Burke, Mack,
Kallman, and Britto

Date Introduced: May 19, 2023

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. This Act shall be known and may be cited as the Personal Choice Self-
2 directed Personal Care Services Act of 2023.

3 (1) The State of Rhode Island is committed to rebalancing the provision of long-term care
4 away from institutional care and towards a home- and community-based care model by enhancing
5 self-direction and consumer choice.

6 (2) The purpose of this chapter is to maximize the array of self-directed personal care
7 services available to Medicaid Long-term services and supports (LTSS) participants by merging
8 the Independent Provider program into the Personal Choice Program. Accordingly, upon the
9 implementation date set forth in this act, the Independent Provider program will cease operations;
10 providing, however, that the elements of the Independent Provider program specified in this chapter
11 related to collective bargaining and negotiations for self-directed personal care services are
12 incorporated into the reconstituted Personal Choice program.

13 (3) The merger of these two (2) self-directed programs will further the State's rebalancing
14 goal by streamlining the delivery of personal care support services, increasing administrative
15 efficiency, making it easier for consumers to self-direct the care they need and want. In addition,
16 by incorporating into the Personal Choice program the collective bargaining rights that were
17 established in the Independent Provider program, the merger will enhance service access, increase
18 the availability of education and training options, and improve the recruitment and retention of the
19 people selected by Medicaid LTSS participants as individual providers. To ensure the merger

1 realizes these ends, the secretary is directed to facilitate a smooth transition of Independent Provider
2 participants opting to continue self-directed personal care services through the Personal Choice
3 program. At a minimum, at least sixty (60) days prior to the end of operations, the executive office
4 of health and human services must notify enrollees and advise them of their option to change to
5 another home and community-based service option or be auto-transitioned to the Personal Choice
6 program.

7 (4) This act does not alter or limit the secretary's authority to administer the Personal
8 Choice Program, enforce existing rules, regulations and procedures or adopt amended rules,
9 regulations and procedures for operating the program, determine a participant Medicaid eligibility
10 and appropriateness for self-directed personal care services, or assess the scope, amount and
11 duration of services authorized to meet a participant's needs, except as specifically set forth in this
12 chapter.

13 (5) This act does not alter or limit the rights of participants and their representative to select,
14 direct, and terminate the services of individual providers or to determine the wages of individual
15 providers within a range set by the secretary in implementing regulations once the programs are
16 combined.

17 (6) This act does not alter or impede the administration or delivery of self-directed
18 programs, including those self-directed programs for Medicaid LTSS participants operated by the
19 department of behavioral healthcare, development disabilities and hospitals for individuals with
20 intellectual disabilities.

21 SECTION 2. Sections 40-8.14-1 and 40-8.14-3 of the General Laws in Chapter 40-8.14
22 entitled "Quality Self-Directed Services" are hereby amended to read as follows:

23 **40-8.14-1. Definitions.**

24 For purposes of this section:

25 (1) ~~"Activities of daily living" (ADL) means the routine activities that people tend to do~~
26 ~~every day without needing assistance. There are six (6) basic ADLs: eating, bathing, dressing,~~
27 ~~toileting, transferring (walking), and continence.~~

28 (2) ~~"Covered home and community based services (HCBS)" means any core, preventive,~~
29 ~~or specialized long term care services and supports available in a person's home or a community-~~
30 ~~based living arrangement that the state is authorized to provide under the Medicaid state plan, the~~
31 ~~Medicaid section 1115 waiver, or any similar program.~~

32 (3) ~~"Direct support services" means the range of home and community based services~~
33 ~~(HCBS) covered services that are identified in the Medicaid state plan, Rhode Island's section 1115~~
34 ~~waiver, or any similar program that may provide similar services in the future, and the rules and~~

~~1 regulations promulgated by the executive office of health and human services (EOHHS) or a
2 designated agency authorize individual home care providers to provide. The direct support services
3 must be provided in accordance with applicable federal and state law, rules, and regulations and
4 include, but are not limited to, personal care assistance, homemaker, and companion services that
5 the state is authorized to provide under the Medicaid state plan, the Medicaid section 1115 waiver,
6 or any similar program in the future, including:~~

~~7 (i) Participant assistance with activities of daily living and instrumental activities of daily
8 living as defined in this chapter;~~

~~9 (ii) Assistance with monitoring health status and physical condition;~~

~~10 (iii) Assistance with preparation and eating of meals (not the cost of the meal itself);~~

~~11 (iv) Assistance with housekeeping activities (bed making, dusting, vacuuming, laundry,
12 grocery shopping, cleaning);~~

~~13 (v) Assistance with transferring, ambulation, and use of special mobility devices assisting
14 the participant by directly providing or arranging transportation; and~~

~~15 (vi) Other similar, in-home, non-medical long-term services and supports provided to an
16 elderly person or individual with a disability by an individual provider to meet the person's daily
17 living needs and ensure that the person may adequately function in the person's home and have
18 safe access to the community.~~

~~19 (4) "Director" means the director of the Rhode Island department of administration.~~

~~20 (2) "Executive office of health and human services (EOHHS)" means the agency in the
21 executive branch of state government that is designated as the Medicaid single state agency and
22 which, in this capacity, oversees the administration of the Medicaid LTSS program.~~

~~23 (5)(3) "Fiscal intermediary" means a third-party organization operating in accordance with
24 applicable federal and state requirements under contract with the ~~EOHHS~~ state that is responsible
25 for performing payroll and other employment-related functions on behalf of the participant as set
26 forth in the implementing regulations for the personal choice program promulgated by the secretary
27 of EOHHS.~~

~~28 (i) The fiscal intermediary shall:~~

~~29 (A) Be authorized by the secretary or a designated agency to receive and distribute support
30 funds on behalf of a participant in accordance with the participant's service plan; and~~

~~31 (B) Act as a fiscal intermediary on behalf of a participant in compliance with all rules,
32 regulations, and terms and conditions established by the secretary.~~

~~33 (ii) The fiscal intermediary shall not make any decisions regarding hiring, supervising, or
34 firing individual providers.~~

1 ~~(6)~~(4) “Individual provider” means an individual selected by and working under the
2 direction of a Medicaid LTSS ~~beneficiary~~ participant or the ~~beneficiary’s~~ participant’s duly
3 authorized representative to provide ~~direct support~~ self-directed personal care services to the
4 participant in accordance with ~~the beneficiary’s service plan,~~ a person-centered plan and the
5 implementing regulations promulgated for the program by the secretary of EOHHS. Individual
6 provider does not mean or ~~but does not~~ include an employee of a provider agency, subject to the
7 agency’s direction and control commensurate with agency employee status ~~or an individual~~
8 ~~providing services to a participant electing the personal choice option in any program.~~

9 ~~(7)~~ “Instrumental activities of daily living” means ~~the skills a person needs to live safely~~
10 ~~and successfully in a residential setting of choice without outside supports. These skills include,~~
11 ~~but are not limited to, using the telephone, traveling, shopping, preparing meals, doing housework,~~
12 ~~taking medications properly, and managing money.~~

13 ~~(8)~~(5) “Medicaid LTSS ~~beneficiary~~ participant” means a person who has been determined
14 by the state to ~~obtain~~ be eligible for Medicaid-funded long-term services and supports under the
15 Medicaid state plan and/or the RI section 1115 waiver demonstration and/or Medicaid authorities
16 created in the future.

17 ~~(9)~~ “Participant” means ~~a Medicaid LTSS beneficiary who receives direct support services~~
18 ~~from an individual provider.~~

19 ~~(10)~~(6) “Participant’s representative” means a participant’s legal guardian or ~~an individual~~
20 ~~having~~ a person who has been designated by the participant or otherwise has the authority and
21 responsibility to act on behalf of a participant with respect to the provision of ~~direct support~~ self-
22 directed services, including the self-directed personal care services subject to this act.

23 ~~(11)~~(7) “Provider representative” means a provider organization that is certified as the
24 exclusive negotiating representative of individual providers as provided in § 40-8.15-7.

25 ~~(12)~~(8) “Secretary” means the secretary of the Rhode Island executive office of health and
26 human services (EOHHS).

27 (9) “Self-directed personal care services” means home and community-based personal care
28 services a Medicaid LTSS participant is authorized to self-direct to meet their daily living needs,
29 function adequately at home, safely access the community, or other nonprofessional services under
30 the personal choice program, independent provider program, or any similar program that may
31 provide similar services in the future under the Medicaid state plan, section 1115 demonstration
32 waiver, or future Medicaid authorities promulgated by the secretary.

33 **40-8.14-3. Use of employee workforce.**

34 The requirement under § 40-8.14-2 shall not restrict the state’s ability to afford participants

1 and participants' representatives who choose not to employ an individual provider, or are unable to
2 do so, the option of receiving ~~direct support~~ personal care services ~~through a personal choice option~~
3 ~~or~~ through the employees of provider agencies, rather than through an individual provider.

4 Nothing in this chapter shall restrict the state's ability to afford Medicaid LTSS
5 ~~beneficiaries authorized to receive HCBS-covered services~~ participants with the freedom of choice
6 guaranteed under Title XIX to enter into service delivery agreements with any authorized Medicaid
7 provider.

8 SECTION 3. Section 40-8.15-9 of the General Laws in Chapter 40-8.15 entitled
9 "Individual Providers of Direct-Support Services" is hereby amended to read as follows:

10 **40-8.15-9. ~~Individual providers not state employees~~ Duties of the executive office for**
11 **health and human services.**

12 (c) Notwithstanding the state's obligations to meet and negotiate under chapter 7 of title
13 28, nothing in this chapter shall be construed to make individual providers employees of the state
14 for any purpose, including for the purposes of eligibility for the state employee pension program
15 or state employee health benefits.

16 (a) The secretary has authority over the terms and conditions of individual providers'
17 employment, including compensation as required under § 40-8.15-14, payment, benefit terms,
18 provider qualification standards, other appropriate terms and conditions for the workforce of
19 individual providers without infringing on participants' or participant representatives' rights and
20 responsibilities to hire, direct, supervise, and/or terminate the employment of their individual
21 providers, and orientation, training, and the operation of a registry as required under § 40-8.15-15.

22 (b) The secretary's authority in subsection (a) of this section only applies to self-directed
23 personal care services and is subject to the state's obligation to meet and negotiate with a provider
24 representative pursuant to § 40-8.15-16.

25 SECTION 4. Chapter 40-8.15 of the General Laws entitled "Individual Providers of Direct-
26 Support Services" is hereby amended by adding thereto the following sections:

27 **40-8.15-14. Wage ranges.**

28 (a) The state shall set wage ranges for all individual providers. All self-directed personal
29 care services performed by individual providers must be compensated at a wage that is within the
30 range set by the secretary for the services provided, but the participant may choose what wage to
31 pay within the applicable range.

32 (b) The wage range may be the subject of collective bargaining as provided in this chapter.
33 However, such collective bargaining shall be related solely to self-directed personal care services.
34 All other self-directed services available to personal choice participants other than personal care

1 are excluded from collective bargaining.

2 (c) The provisions of this section shall take effect on the date of implementation, as
3 provided in § 40-8.15-16(c).

4 **40-8.15-15. Other duties of the executive office for health and human services.**

5 (a) The secretary shall determine by regulation whether and to what extent individual
6 providers selected by personal choice participants to provide self-directed personal care are
7 required to complete an orientation, pursuant to the secretary's authority under § 40-8.14-4(c)(2).
8 The secretary shall determine by regulation the specific types of education, experience or training
9 that may be required for an individual provider to be included on a registry of persons qualified to
10 be self-directed individual providers.

11 (1) The subjects of this section shall be collectively bargained with the provider
12 representative. Nothing in this act prohibits a personal choice participant from requiring an
13 individual provider to complete more training or education than is minimally required by the
14 secretary.

15 (b) The secretary shall maintain a registry for individual providers pursuant to its authority
16 under § 40-8.14-4(c)(4) and shall collaborate with the provider representative to maintain this
17 registry.

18 (c) The provisions of this section shall take effect on the date of implementation, as
19 provided in § 40-8.15-16(c).

20 **40-8.15-16. Implementation.**

21 (a) For purposes of this section, the independent provider (IP) program and the personal
22 choice program shall have the meanings that were set forth in 210-RICR-50-10-2.2(A)(1) and
23 (A)(2) as of the effective date of the personal choice in self-directed personal care services act of
24 2023.

25 (b) The secretary shall merge the independent provider program into the personal choice
26 program, so that as of the date of implementation the independent provider program will cease
27 operations. All new Medicaid LTSS participants seeking self-directed personal care services in a
28 program included under this act will be enrolled in the personal choice program if all necessary
29 requirements are met. The secretary shall transition independent provider participants opting to
30 continue self-direction into the personal choice program no later than the date of their annual
31 reassessment.

32 (1) The secretary shall make all changes to regulations and practices as needed to
33 implement this merger.

34 (2) The secretary within one hundred and twenty (120) days of the effective date of this act

1 shall apply for any necessary federal approvals, including the submission of any necessary
2 Medicaid state pan amendments to the federal Centers for Medicare & Medicaid Services.

3 (c) Once the secretary has implemented the merger of the programs, and no later than one
4 hundred twenty (120) days after any necessary federal approvals are obtained, the secretary shall
5 certify that the personal choice self-directed personal care services act of 2023 has been
6 implemented. The date of that certification shall be the “date of implementation” for all provisions
7 of this chapter.

8 (d) Within ninety (90) days of the effective date of the personal choice self-directed
9 personal care services act of 2023, any provider organization that has previously been certified to
10 serve as the provider representative of any individual providers pursuant to § 40-8.15-7 shall be
11 furnished by the secretary with contact information for every person providing self-directed
12 personal care services under the personal choice program. The secretary shall provide any such
13 provider organization with updated contact information every sixty (60) days thereafter.

14 (e) Any provider organization that has previously been certified to serve as the provider
15 representative of any individual providers pursuant to § 40-8.15-7 may, prior to the date of
16 implementation, petition to be certified as the provider representative of the bargaining unit that
17 will be comprised of all the individual providers in the personal choice program after the date of
18 implementation. The secretary shall hold an election to determine whether such a provider
19 organization shall be certified as the provider representative for that bargaining unit upon a ten
20 percent (10%) showing of interest. All persons who are providing self-direct services under the
21 personal choice program shall be considered part of the bargaining unit for purposes of the showing
22 of interest and shall be eligible to vote in the certification election. If a majority of those casting
23 ballots vote to be represented by that provider organization, then the provider organization shall be
24 certified as the provider representative to negotiate with the state over the terms and conditions of
25 individual providers' participation in providing self-directed personal care services for all
26 individual providers in the state as of the date of implementation. The provisions of this chapter
27 shall otherwise apply.

28 (f) Nothing in this act shall be construed to alter or limit the rights of participants and their
29 representative to select, direct, and terminate the services of individual providers or to determine
30 individual providers' wages within a range set by the secretary, or to alter or limit the secretary's
31 authority to administer the personal choice program including to adopt rules and operate the
32 program, to determine participant budgets, to determine eligibility, or to authorize services, except
33 as specifically set forth in this chapter.

34 (g) Nothing in this act shall be construed to affect the administration or delivery of self-

1 directed programs for individuals with intellectual disabilities.

2 (h) Nothing in this act shall be construed to alter or limit the rights of participants and their
3 representative to select, direct, and terminate the services of individual providers or to determine
4 individual providers' wages within a range set by the secretary, or to alter or limit the secretary's
5 authority to administer the personal choice program, including to adopt rules and operate the
6 program, to determine participant budgets, to determine eligibility, or to authorize services, except
7 as specifically set forth in this chapter.

8 (i) No provision of any agreement or award resulting from collective bargaining and
9 negotiations under this act shall provide for a reduction in Medicaid federal financial participation
10 under Title XIX of the Social Security Act, nor shall any provision of any agreement or award
11 provide for a reduction in the self-directed personal care services for eligible personal choice
12 program Medicaid LTSS participants. Any provision in any agreement or award which would
13 require an additional appropriation in order to maintain the levels of services provided by existing
14 appropriations shall be subject to the annual budget process.

15 SECTION 5. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HUMAN SERVICES -- QUALITY SELF-DIRECTED SERVICES

1 This act would, relative to the provision of home and community based services, provide
2 for the merger of the independent provider program into the personal choice program so that the
3 state has one self-directed program called the personal choice program for direct support services.

4 This act would take effect upon passage.

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